

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JUNE 2, 2011

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, June 2, 2011, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
Bill Chambers
James Dissen
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes were sent out for the previous meeting of April 26. Did everybody have a chance to look them over?

Dan Marshall made the motion to approve the minutes from the April 26, 2010. The motion was seconded by James Dissen and passed unanimously.

Chairman Dean: We are going to go out of order. We have a person that asked to address us [Council], and this person needs to leave early today. Ms. Howard, would you like to come forward?

Sue Howard (Attorney from Wheeling, WV): I am Sue Howard. I practice in Wheeling. I am one of the few remaining "claimant lawyers" in the State. And I'm the daughter of a coal miner, so maybe that's why I still do this work. One of the issues I wanted to bring to your attention – because I don't know that anybody is looking at it – relates to the "stays" that are granted, particularly with decisions that have been granted by the Office of Judges and the employer appeals to our Board of Review. I don't know if anybody is following the statistics of the Board of Review. The Office of Judges'

report I'm sure will reflect the number of stays that they may have and regressed to its agency. But at the Board of Review it's been our perception, at least anecdotally, that the number of stays have increased but are being filed by the carriers. . .and the number of stays that are granted on issues of temporary total disability – because we do not deal with stays on medical treatment issues – they are fundamentally limited to TTD issues. Our perception is – without the statistics – that the number of stays is increasing. I don't know if that's anything on anybody's radar screen, but I can tell you that it is causing a tremendous hardship for injured workers who have decisions from a judge who have been reviewed and get stayed for months at the Board of Review level. One thing with workers' compensation, and I suppose we could all argue about the adequacy of the benefit structure at this point in time, but the courts and the Legislature agree that it is not only what benefits you give injured workers – it's "when" you provide those benefits. And the Legislature and the courts have determined that benefits should be provided as promptly as possible to lessen the hardship to injured workers and their family. These stays are causing significant delay for people who are disabled who have no income and have no benefits coming in. And there are just no standards being applied that I've been able to determine at the Board of Review. The Office of Judges does have rules in place governing standards for stays. The Board of Review does not. And I wanted to just speak to you briefly to try to call this problem to your attention, to let you know right now that this system is failing for these injured workers who have been granted benefits for wage replacement temporary total disability before the Board of Review from the Office of Judges and those benefits are being withheld pending the resolution of the determination by the Board of Review which takes months. That's all I wanted to speak about and I appreciate your time. Does anyone have any questions?

Chairman Dean: Mr. Chambers, do you have any questions?

Bill Chambers: A couple of questions, and you may have just addressed it. What is your sense of the average length of a stay?

Ms. Howard: Well, when you file an appeal to the Office of Judges the employer has 30 days. Both parties have 30 days, but we're talking about a favorable claimant decision. So they have 30 days to apply for the appeal. The Board acknowledges that generally within a week. They are very fast about that. But under the regulations there's 60 days for that party to submit a brief and then there is 30 days beyond that to submit a response from the claimant. Then the Board will issue an Order that asks the parties if they want to present oral argument. Then routinely the employer is presenting the oral argument, and that gets scheduled maybe a month after that, two months, depending upon the Board's schedule. And then after that they will issue a decision. And it is at that point in that decision that the stay may be lifted and it affirms what the

Offices of Judges has awarded, but the benefits have been withheld for the claimant for four months, five months. That's a long time when you are without an income.

Mr. Chambers: When you said that your anecdotal evidence or your observations are that there has been an increased number of requests and an increased number of. . .could you attempt to quantify? Is it 10%? Is it 50%? Have they doubled?

Ms. Howard: I contacted another lawyer in Wheeling who does claimant work and she thought in her practice that there were maybe two appeals. . .denied. . .and that the stays were routinely granted in all of her other claims and she did not quantify for me how many cases she has on appeal. But it is significant. Employer attorneys know that these stays are being granted so they feel as though they have to file. There is no standard involved in terms of whether the party stands an excellent chance of prevailing on appeal. I mean that's one of the factors the Office of Judges considers in its regulations, but the Board of Review apparently does not.

Mr. Chambers: In the event that there is a stay – the benefits that have been awarded or stopped – and then the final judgment is in favor of the employee. Are those benefits made up?

Ms. Howard: They are paid in a lump sum because you're usually talking about a period of temporary total disability.

Mr. Chambers: So those aren't lost. They are delayed.

Ms. Howard: They are delayed.

Mr. Chambers: Thank you.

Ms. Howard: And delay is what we can't have happen for these people who are disabled from employment and found to be entitled to benefits by a judge. There may be instances where the decision was so erroneous that you believe you are going to prevail on appeal. But that's not what I'm seeing. I'm seeing just the opposite. And I think it's an issue that's important enough for the Council to look into.

Mr. Chambers: Thank you.

Chairman Dean: Mr. Dissen, do you have a question?

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James Dissen: You're saying basically there are no standards for the Board of Review granting the stays.

Ms. Howard: Nothing in the regulations. Now internally they may have a standard that I'm not aware of. But there is nothing. . .unlike the Office of Judges within the Board of Review's regulations that deals with a stay. And under the statute the person who is requesting the stay can either make that motion before the Office of Judges or the Board of Review. I have not seen requests for stay to the Office of Judges. I don't think I've seen one in my practice before the Office of Judges. They are all made before the Board of Review.

Mr. Dissen: Since you're a practitioner in the field, do you have any suggestions or something you could submit to this Council as to a "suggested standard" that we could look at?

Ms. Howard: I would look to the suggested standards by the Office of Judges because that really requires the body issuing the stay to look at the merits of the case. Whenever a stay is filed there is a memorandum associated with that that states the reasons and justifications for the stay. The claimant would have 10 days to respond to that, and we frequently do so. It's not as though the Board of Review is going to have to look over every stay request to see if. . .to look at the file and the underlying issues on its own. The parties have done that. It's part of the stay process. So there would be an ability I think for that Board to make a determination if there might be a basis to hold up the stay. Clearly. . .the Office of Judges regulations recognized that the Legislature did not intend for these stays to be granted routinely, that they be granted on a very careful basis because of the interests involved with the financial hardship on injured workers. This consideration needs to be applied at the Board of Review level and there needs to be some fairness in the process that sets forth standards and does not allow this to be absolutely arbitrary. And you've got to understand as well, as part of this process, that the Board of Review when it issues an Order of "staying" what the judge has done – that that Order is interlocutory. That means you can't appeal that delay until the final decision issues, and then it can go to court. We're really in a position where we're being blocked with any meaningful remedy to what's going on with the stays and that's why I had hoped that calling this matter to your attention, where it might not otherwise be raised, is an important issue.

Chairman Dean: Mr. Hartsog, do you have a question?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall, do you have a question?

Dan Marshall: One question. Can you quantify. . .of the stays that are granted the ultimate adjudication of those cases. What percentage would you say come down where the Office of Judges has affirmed?

Ms. Howard: I can only tell you of my cases, and they run very high in terms of the percentages of cases that are affirmed with the Office of Judges. That's part of the reason that I wanted to talk with you today because I don't have any of the statistics or really any meaningful way to draw on this. I don't think anybody is even looking at this problem. I don't know if the Board of Review even collects the statistics. They may be available and they may not. I just don't know. And I think it's something that merits looking at simply because the "claimant bar," if you will, is discussing it among ourselves and we're very concerned about the situation. So, I think you ought to be concerned about that. Can I answer anybody else's question? Thank you very much for your time. I appreciate it so much.

Chairman Dean: Thank you.

Mr. Marshall: Mr. Chairman, let me address an inquiry to either Ryan [Sims] or Mary Jane [Pickens]. The matter that Ms. Howard brought to our attention here, is that in your opinion an item that we have the authority or jurisdiction to deal with as the Industrial Council?

Mary Jane Pickens (General Counsel, OIC): I think possibly. As Ms. Howard pointed out, the Office of Judges has some underpinnings to the statutory stay provision in their Procedural Rule. Our belief is that the Board of Review also has authority to do Procedural Rules.

Rebecca Roush: I believe there is a Procedural Rule.

Ms. Pickens: That's what Ryan [Sims] was saying. It is a Procedural Rule, and the Board of Review would do it the same way the Office of Judges does it, which is with a public notice and an opportunity. . .I don't know if they have a public hearing. But it is not something that the Industrial Council does. It's a Procedural Rule. When the Office of Judges updates their rule, they tell you about it, but they don't run it through this [Council].

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Mr. Marshall: My question would be do we have any authority to direct the Board of Review to address the matter and come up with some sort of objective standard to these stays?

Ms. Pickens: I think what we need to do is talk to the Board of Review. No one has voiced this concern to me before, but I agree with many of the things that Ms. Howard says because I worked with the House Judiciary Committee and Carrie Webster at the time that that statute was passed. It was intended to be there for a specific purpose, and I don't think it was intended to be routine. I don't know if what Ms. Howard says is true or not, but we'll find out. We need to talk to the Board of Review. I think it is probably more appropriate – if that is to be done – that the Board of Review handles that in their Procedural Rule because that's the way Office of Judges has done it. I don't know that this Council would be precluded from adding it to an existing workers' compensation rule over which it has authority. If the Insurance Commissioner would come to you and say, "I want to amend this rule to add some standards that might be for everybody." The next step is for us to talk to the Board of Review. I suspect there is some data, maybe not. But I would guess that there is, and we could probably come back with a lot more information on this.

Mr. Marshall: I appreciate that. I think it's an appropriate scope of inquiry for us. And based on what you come back with we can decide what, if any, action might be appropriate for this body to take.

Ms. Pickens: Sure.

Mr. Hartsog: Perhaps the flipside of that too is to request. . .that we ask the Board of Review to talk to us and let us know what they are doing and how they see that also.

Ms. Pickens: I think that would be fine as well.

Mr. Hartsog: Perhaps, Mr. Chairman, we could request that we get something in that venue on our next agenda.

Ms. Pickens: We can do that.

Mr. Hartsog: I would like to learn more about the process myself.

Ms. Pickens: The Board of Review does a report. They don't routinely show up here and present a report like Judge Roush does, but they do prepare a monthly report and send it out.

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Commissioner Jane Cline: It is also reported to the Joint Committee of Government and Finance every month as well. If people want to see that, it is public information and we do make that available. We do file it with the Joint Committee and share it with. . .

Ms. Pickens: But I don't know if it specifically addresses the "stay issue."

Commissioner Cline: I'm looking and I don't see where it does, but certainly we can talk to. . . Judge Stevens is Chair at this time. The Board of Review has three individuals appointed by the Governor. Currently that is Judge W. Jack Stevens, Judge James D. Gray and Rita Hedrick-Helmick.

Ms. Pickens: Just so I understand. . . is it the Council's desire to have a representative at the Board the Review to address the stay issue at the next meeting?

Chairman Dean: Please. . .

Commissioner Cline: We can start including the report that is submitted to the Joint Committee.

Ms. Pickens: I think they do receive that. I think they receive it by e-mail, although honestly I don't remember seeing one before this meeting. But normally it is distributed.

Commissioner Cline: Barbara Ong sends it to us.

Ms. Pickens: If it would be clearer for everybody – and I'm getting a sense that it might be – we can routinely start including that in the hard copy packet at every Industrial Council meeting. They do have a standard report at the Board of Review.

Chairman Dean: Can we have somebody come over from the Board of Review at the next meeting?

Ms. Pickens: Yes.

Chairman Dean: Any other questions or comments before we move on?

3. Report from NCCI, Statistical Agent for OIC – Dennis Kokulak

Dennis Kokulak: Good afternoon. My name is Dennis Kokulak with NCCI. I'm NCCI's State Relations Representative for West Virginia and several other states. So what that means is I am NCCI's prime liaison, prime contact with insurance regulators and various publics that we deal with, whether its agents, associations, workers' comp commissions and others.

What I've been asked to do today in an abbreviated timeframe are a couple of things. One, take you through kind of a quick summation of what we are as an organization and what we do. And then, again, give you a quick summation of the West Virginia workers' comp market as it stands today. So some of this information is a little bit dated, but I wanted to mention something before I get started. To the extent that you have an interest – and I believe that you very well do – there is a meeting that we conduct once a year in all of our states. It is called our "State Advisory Forum." Some of you may have been to this. We have been doing it here for three years. That meeting will be on Wednesday, September 7, 2011, at the Marriott by the Town Center Mall. We start at 8:30 a.m. with a breakfast. The meeting starts at 9:00 a.m., and we'll generally get you out of there by 11:30 a.m. So it's a half-day max. In the second half of this presentation we spend a lot of time talking about national trends in workers' comp and West Virginia so you can get a comparison – what is happening nationally, regionally and then what's happening in West Virginia [as a comparison]. Most people seem to enjoy it. It is free. We even throw in a continental breakfast. It's the best deal in town probably that morning. We promise to try not to bore you, in spite of the subject matter.

Again, due to the time constraints, I'm going to . . . not rip through this, but I'm going to go unless somebody stops me with question – is that fair to do that?

Chairman Dean: Sure.

Mr. Kokulak: Okay. I'll apologize in advance. Some of you are hearing this for probably the fifth or sixth time or maybe ninth or tenth time. But there is not much more you can do with it other than just kind of lay it out for you.

The first part of this – just to give you some background on the organization – NCCI, a National Council on Compensation Insurance, Inc. We've been around for a number of years. The workers' comp system kicked off around 1911–1912. We were initiated and established in 1922. It became a parent at that time. There needed to be an organization that was going to act as a prime collector of data for this new line of

insurance. That's been our primary role since that time. We do this work in 37 of the 51 jurisdictions; consider the 50 states and the District of Columbia. The states where we don't do what we do have their own individual organizations. Their state statutes dictate that there be an organization that does that strictly for that state. Other than that we cover the rest of the country. We are not for profit. We are owned by the insurers. And what that simply means is that the funding of our organization is done by the affiliate insurance companies in a state based on their proportion share of the premium writing. So if Liberty Mutual writes 10% of the premium in this state – which at this point I believe they do or in that neighborhood – they will pay 10% of the NCCI annual fees for operating in this state. That is simple.

NCCI's mission – I'll go through that very quickly. We do a number of things that can really be summed up in these four:

(1) Adequate Loss Costs/Rates. Based on the data that we collect from the insurance companies that write workers' comp premium in the 37 states, including West Virginia, we analyze that data and we make determinations as to what needs to happen with the rate level in a state. So once a year we will file for either an increase or a decrease in rates or loss costs. Loss costs are a piece of the rate that carriers will take as a start-up point and add their own individual company expenses to make a rate. That is our prime objective at NCCI. I mentioned our meeting on September 7. Another key date is the third week in July. We will make our annual filing with the Offices of the WV Insurance Commissioner. And that will suggest or propose a change in the loss costs level, as well as a change in the assigned risk rates that will become effective on November 1 of this year. West Virginia, after many years of being on a July 1 annual basis, is now on a November 1 annual basis as far as rate changes and things of that nature. We will be doing that. In fact the actuaries are already at work developing that change.

(2) Objective Reform and Evaluation. Another thing that we do since we are the "sole keeper" of all this data [with respect to the workers' comp system], it puts us in a very unique position to evaluate legislative proposals. And we do quite a bit of that. Not in just West Virginia. We do it in a number of states. When there is a proposal – for instance just to give you an example – that would suggest a change where benefits would be increased, we can generally put a dollar figure on that. If a state is contemplating through legislative activity a change in the benefit level, either up or down, generally we would step in and be able to alert the Insurance Commissioner as to what impact that would have on system costs.

(3) Self-Funded Residual Markets. That is a new concept in this state – the fact that an employer might not be able to get coverage because now in this competitive market carriers don't want to voluntarily write a particular employer. There is a mechanism that we manage at NCCI to ensure that all employers get workers' comp coverage, be it in this assigned risk mechanism if that's what it takes. So we manage that mechanism.

(4) Tangible Value for Stakeholders. We'll talk a little bit more about that.

We'll move to the next slide – A Closer Look at What We Do. We call it the "six R's." Ratemaking; Reform. I talked a little about both of those things already.

Residual Market that we manage. Ratings. We do individual employer experience modification ratings where employers of a particular size – this doesn't apply to all of the employers in the state but employers of a particular size, generally it is \$5,000.00 in premium a year and above – will have their premium impacted by the success of their loss control efforts. So they will get an experience modification factor that will gauge them against all the other employers in the state that do what they do. So if you've got a roofing company in West Virginia, you are going to be compared to all the other roofing companies and you'll get an experience mod factor that will influence your premium either up or down, based on your success as far as controlling losses. There are about 37,000 policyholders in West Virginia. About 12,000 to 12,500 qualify for this experience rating function that we're talking about.

Rules. These are not the rules that you generally talk about as your group will be concerned with. These are the underwriting rules that provide the infrastructure for the way the system works with respect to how businesses are classified, how premium is determined. That is a function of NCCI to make changes to those rules and to propose those to the insurance departments. Again, we do not arbitrarily implement anything. Everything we do requires regulatory approval.

Reporting. Carriers have strict data reporting requirements in a state. If you're writing workers' comp insurance in this state, if you're an affiliate of NCCI, you must report certain data to us. There are heavy fines for carriers that do not report or they report erroneously or they report late. This is something that we take very seriously.

Mr. Chambers: How do you know when the reports are erroneous?

Mr. Kokulak: We put all of the data that we get through significant computerized edits and evaluations. We know what the proper classification should be. If we see, for

instance, a business. . .I'll use a roofing company last year that had the "roofing company" classification on it. If it comes in with another classification this year, it's new data. We would challenge that. We go to the insurance company and say, "Odds are a roofing company is not going to change its classification. What happened here? Did you make a mistake?" So there are a series of edits that we do to ensure that the data is accurate as it can be.

NCCI's Unique Competencies. I talked about this. Gathering comprehensive data; analyzing that data; sharing information with a stakeholder network. And I'll get to what that is in a couple of more slides.

NCCI Data Collection Activities. We collect information about workers' comp policies. Carriers have to submit the policies to us when they write them. So countrywide that's in the area of about two and a half million policies that we collect. Again, it's about 37,000 or so here in West Virginia. They submit claims information to us. They submit annual updates on claim information as it changes, as the reserves change each year. And they also submit their financial results to us which are used in determining what this rate change filing looks like every year. Again, that constitutes our daily repository.

Workers' Compensation Stakeholders. There is the list of the organizations that we interact primarily with – obviously our insurance companies, regulators, agents/brokers. I'll give you an example of interaction with agents and brokers. I was mentioning to someone. . .we'll be back here next Friday. We are doing an agent training workshop at the Marriott for agents on how to properly submit employers for assigned risk coverage. We've got a particular issue right now with respect to changes that are going to take place as of July 1 with volunteer fire departments in the state. In the area of about 400 volunteer fire departments will no longer be covered by BrickStreet because BrickStreet can statutorily get off those risks as of July 1. It is likely the history and experience that we are seeing in other states mimics itself here. There are not carriers that are clamoring to write volunteer fire department business. So we are anticipating that the vast majority, if not virtually all, of the state's volunteer fire departments will be coming through our assigned risk mechanism. So we're gearing up for that, and that's part of what we are going to do as far these agent training sessions. We've got one [training] here next Friday and the day before in Morgantown. I think we've got a turnout of about 170 agents so far that will be attending those two events.

Employers. We do a lot of interaction. We did a lot of training in the state with the employers when we first came into the state.

Independent Bureaus. I mentioned them. Those are the 14 jurisdictions, 14 states that essentially do what we do, but just do it in their individual states. The closest one would be Pennsylvania, which has their own rating bureau.

Trade Associations, Employees, Public Policy Makers. We do a lot of interaction with legislators. We've had a lot of interaction with your State Auditor's Office here in recent months because of H.B. 3271, which set up this Volunteer Fire Department Subsidy Program. In some cases they are going to see significant premium increases. This subsidy program is something they can tap to assist them in paying their workers' compensation premium. So we've been dealing with your State Auditor's Office to make that as smooth of a process as possible. Any questions? Well, you're doing great as far as no questions.

I'll go through this real quick. Strategic Goals – some of this is redundant. You've heard me say it already.

(1) File and gain approval of adequate loss costs.

(2) Evaluate system reform, talked about that.

(3) Self sustaining residual markets. Let me make sure that that's understood. Employers that come into the assigned risk mechanism will pay more for their coverage. We've got enough history and data to show that employers who end up in the assigned risk market do not perform as well from a loss control standpoint, so the rates are going to be higher in the assigned risk market. That's the case here. There are other pricing programs too. We do a number of things to give incentive to employers to get out of the residual market. That's not where you want to be if you're an employer. And if you're there you don't want to stay there too long.

(4) Identify emerging trends and issues through research and analysis. We've got some interesting things that our economists do. We've done some research work as to what is the impact on a workers' comp system based on the fact that people seem to be working to a later age. I'm going to quit when I'm 55, 60, 65, whatever it is. People are staying in the workforce longer. What does that mean? What does that portend for the workers' comp system? A lot of what we would tell you in these research studies you can think, well, its just common sense makes the point there. As an example, you can read the whole study and sometimes we deal with it and I think. . .state advisory forums. But generally all of their employees are safer on the job. They get injured much less frequently than younger employees, but when they do – watch out. The same injury

occurrence to a 22 year old could result in that person being back to work in a month. A 62 year old could be out six months. It's that frequency versus the severity issue.

We've got interesting studies too on the impact of a recession on the workers' compensation system – a lot of good information. And, again, I'm not trying to entice you to come to these State Advisory Forums. A lot of this information is available to you at NCCI.com. If you have an appetite for it, if you want, I would be happy to come back to a subsequent meeting if you folks are really bored and want to have me come back again. I can share some of that information with you.

(5) Continuously improve data quality and timeliness while ensuring its relevance to changing business requirements. That is just self-driven things that we try to do to make sure that that process continues to improve.

(6) Ensure the workers' compensation infrastructure of plans, rules, forms and classifications is relevant and responsive. We do constantly analyze the rules and the class systems to make sure it is relevant, it is appropriate. If not we make a filing with the regulator in a state to effectuate the change.

(7) Partner with Industry Organizations, and then the last three are internally driven NCCI goals.

(8) Continuously Strive for Excellence – who doesn't do that?

(9) Attract, develop and retain knowledgeable, skillful and engaged employees to be the nucleus of workers' compensation expertise.

(10) Ensure that NCCI is financially sound and cost effective.

NCCI Products and Services – I'll go through those again. Some of this is redundant. I've mentioned these already. When you look at rates, we do make loss cost filings in this state. Not rate filings. We file just that piece of the rate.

Expert Testimony to the Extent Needed – We do testify when there are legislative proposals that could impact the rate level in this state. Again, we have the most credible objective data. We analyze medical costs, frequency, and claims research. I am going to share some of that particular information with you in a few minutes.

Ratings – I already mentioned.

Experience Rating – We have risk specific tools, benchmarking tools. There is a facility where you take an employer's experience modification, go into our system, and do some "what if" analysis. What if that \$50,000.00 claim they had was only a \$20,000.00 claim? You can plug it in and the system will tell you how much the experience mod would have dropped if the claim hadn't occurred at all. There are a number of things that we make available.

Reform – I mentioned this already.

Legislative Analysis – Something that we do in all of our states.

Workplace Safety and Incentive Programs – We've got a number of things we filed with state regulators with respect to programs that give incentives to employers to operate drug free workplaces, and they can generally get a 5% premium credit if they do that – certify that they drug test their employees.

Residual Market – I think I talked about this enough. We administer the program.

Depopulation Programs – We've got a number of things under that header where we do try to give incentives to employers to get out of the residual market. It is not a good place to be.

Reporting – I've mentioned all of those things. Under the rules I talked about the class system and some of the other things we do with respect to maintaining manuals.

Mary Jane Pickens: You might mention something about proof of coverage.

Mr. Kokulak: Proof of coverage and coverage verification services is something that we have available to employers, and we've actually partnered with a number of insurance departments. Since we have all the data and all the policies that carriers submit to us for every employer in the state that's got a workers' comp policy, we are in that unique position of being able to alert a regulator or a carrier as to whether or not an employer let their coverage lapse. If you have ABC Roofing here in Charleston – if there is such a thing – we could go in. We know that they have a July 1 renewal. If there is no July 1, 2011 coverage we would be able to determine that. That could be a compliance issue and there could be a number of things that we do to support regulators in that regard.

That is the end of the first half of this. What does NCCI do type of commentary. Let me take you through this overview – where the system is here in the state. Again, at the September meeting we spend a considerable amount of time on this. We don't

spend any amount of time on what I just went through. We assume everybody walking through the door knows what we do and why we do it. But we will talk about in September – we are going to be making our loss costs filing and our assigned risk rate filing. The third week in July we'll have a status at that point. If it's not approved, we'll let you know where it stands in the regulatory approval aspect of things. But we will talk about that filing and what drove it. What's behind the numbers? Not that we just filed an increase of 2% or a decrease of 5%. Why? What is the underlying information? So a lot of people find it interesting for that reason. Again, the numbers are going to be out there. It will be public when we make the filing in July. But the underpinnings – what's in the data? What are we seeing that portends well or maybe not so well for the system in the coming years? That is really what we try to get to. I think is the value of that meeting.

Claim frequency has continued to decline in West Virginia, that's as of last report. We've got new data that just came into us April of this year that is being evaluated now. So I don't know that that's the case today. What I can tell you is that nationally after a period of about 18 out of 20 of the past years where claim frequency has declined from the previous year that changed with the results of 2010. Actually it took a little bit of an uptick. We don't know if that's a one year situation. . .start of a trend. Generally you will see when the country comes out of a recession – and we are supposed to be out of recession at this point – you will see claim frequency tick up. That's been the history. And the reason it "ticks" up is because hiring starts again. When hiring starts again, new workers are historically less safe and more injury and accident prone. So we see a slight uptick in claim frequency. Again, we don't have that information with respect to West Virginia right now, but the trend over the last few years has certainly been downward. Hopefully, that's continued here. I was just in Arizona, another state that I work in. We know in fact that despite the national uptick for last year that in Arizona claim frequency took another significant decrease last year. So at the same time where it took an uptick nationally, in Arizona it went down. Now that's driven by Arizona's economy. Construction came to a virtual standstill. They haven't recovered in Arizona. The economy is not going to come around they don't think until 2015. That's probably the reason for that. Again, we'll see what the West Virginia situation looks like. That data is being evaluated right now.

Average indemnity and medical costs are increasing more rapidly in West Virginia than in other states. But you are in pretty good shape compared to the other states when you look at the numbers when we go to those in a couple of minutes.

Coal mine loss costs increased partly due to changes in the Federal Black Lung Benefits Act. There is that Byrd Amendment to the National Healthcare. I think you're probably aware of it. We did come in and file a slight increase with respect to that.

Residual market remains sparsely populated. That too is changing. Just to give you some quick numbers. Right now if you go around the country the residual market in the states that we work in is about 4% to 5% of the premium. Some states are a little bit more, depends on the economy. Here it has gone from about .08% last year to about 2.0%. You've got about \$7.6 million dollars in premium in West Virginia in the assigned risk market. These are the employers who can't get voluntary coverage. In fact that \$7.6 million is going to uptick almost by a \$1 million because one employer came through yesterday for coverage. It's an employer of \$970,000.00 in premium. So all by their lonesome they are going to increase that number. But right now you stand at about 2% of your market here and that's in the residual market.

Let's take a look at the next slide. Premium volume is decreasing. I do have the 2010 number for you. We saw another decline. Premium in West Virginia at the end of 2010 was at \$374 million dollars. So we've seen it decline here, about 25% – 28% in that range over the last few years. That is generally the result of two things. This is consistent with what we've seen nationally. The premium in workers' comp is down significantly. In Arizona it is down 45%. And, again, their economy, virtual standstill, and then when you think about some of the higher rated, higher payroll, like the building trades. When they shut down it has an even greater impact on a line of insurance like this which is payroll driven. West Virginia – the latest on that in 2010 – premium at \$374 million. . . significant drop since 2007.

Where do you stand combined ratio wise? I'll give you a quick explanation on this. Combined ratio is one of the measures that insurance companies use to determine. . . I was going to say profitability, but it's probably more accurate to say "determine" how much money they are losing. Combined ratio is essentially, if you think of it as for every dollar that an insurance company takes in [in premium], how much goes out the door with respect to paying claims, claims expense, or what they might pay in dividends. A dollar (\$1.00) would be a break even point. What's not considered in the combined ratio is investment income. West Virginia, you can see it highlighted there. A combined ratio as of a year ago – we've got a new number now that I don't have available yet – was \$1.03. Certainly individual carriers can do better than that. But overall for every dollar insurance companies took in [in this state] they paid out \$1.03 in claims and expenses.

The next slide – I wanted to give you a comparison to where West Virginia stood with respect to what we've termed, since we have been operating in the state, as a

southern regional state. When we came into the state without a whole lot of history, a lot of what we had to do from a ratemaking standpoint was take a look at what the costs were in the seven surrounding states – southern regional states. As you can see here once you move payroll in a state you distribute it so that it's commensurate with West Virginia payroll. It's about as close as you can get to an apples-to-apples comparison. Your average loss costs at a \$1.45 is the second lowest in the region, second only to Virginia. Not bad news there. Again, these numbers are always changing.

Somebody asked me earlier. . .at \$374 million dollars in premium, if you are curious, about 37 states that we operate in that would rank you – if you are interested in a ranking – somewhere around 21 or 22 as far as the most amount of premium.

Next slide. Current NCCI voluntary market loss cost changes. Really the message here. . .and this is going to change. I can already tell that it is changing because if you look at this – the zero line and down – the first 26 states over from left to right are states where the most recent filing we made was for a decrease. Then we had 11 states, starting with Hawaii and the states to the right, where we filed either zero or an increase. So the vast majority we filed decreases. That is going to change this year or probably flip around just the other way – the way it's looking right now. But there you can see the most recent change for West Virginia at minus 2.9 kind of puts you right in the middle of the pack. Still doing great with the no questions. Appreciate it.

West Virginia's Filing Activity – When we make it in July this will be our sixth filing. We've not made an increase filing here yet. The history has been five consecutive decreases. We will see if that holds up. We have filed these decreases probably in the area of about 25% – 28% cumulatively since 2006. And things got cleaned up at that point. Since the market opened in July of 2008 it has been stable, some very minor decreases. The 0.2% and 3.4% [the things in the dark], those are the assigned risk level changes. Again, I mentioned earlier assigned risk rates are going to be higher than the voluntary market rates because of the nature of the businesses that are in that market.

The next slide. Declines in Claim frequency. We talked a little about this already. Just a comparison. . .in 2005, 2009 – for a million dollars in premium – this is loss time claims; from 37.0 to just a little over 27.2 claims, a million dollars in premium. Some pretty good results. Claim frequency, again, trending downward at the same time it was trending downward nationally. The big thing is going to be, let's see what happens in 2010 and will West Virginia follow the national trend where there's an uptick or that decline going to continue here. So that's claim frequency.

Let's take a look at medical and indemnity, two pieces of the workers' compensation payout. And what we've done with this next slide, number 20, is take a look at medical severity growth in West Virginia and remove the aspect of wage growth. So assuming wages were the same in 2005 and as they were in 2009 you've seen the average claim go up from \$14,800.00 to \$18,100.00. Not bad. That's pretty close to what we've seen on a national perspective with respect to the growth. Some states have started off with a much higher point than that, which I'll show you.

The next slide, same thing for indemnity. Remove any aspect of wage growth and what's been happening with indemnity claim values in West Virginia over that same period. They have gone from an average claim of \$14,400.00 to \$16,100.00. Again, over and above the impact of wage inflation.

The claim frequency slide on page 22 – That just illustrates the year-to-year change over the last few years in West Virginia. I spoke about this already. Again, pretty much mimicking what we've seen nationally.

The next slide is a breakdown of pie charts. It gives you a picture of how the dollar payout breaks out in workers' comp when you look at medical versus indemnity in West Virginia and how that compares to the national numbers. More and more nationally we're seeing the medical part of the payout be the real predominant piece of the payout. Here in West Virginia it is still close to a 50/50 split, but it is certainly something we're keeping our eye on.

Medical Claim Cost Trends – This is just another illustration of what I showed on the prior slide. This is the year-to-year increase from 2006 through 2009. The growth in the medical claim – 7.2% to 11.5% to 15.1% to 6.7% – that's significant growth. It is certainly higher than any inflationary numbers, and it is similar to what we've seen in a lot of states. That is what gets you to an average medical claim, just over \$18,000.00. So, you've seen some growth but again maybe it's not going to feel so bad when you look at the next slide.

Mr. Chambers: What other than inflation contributes to this kind of an increase in the medical?

Mr. Kokulak: We've got studies on that and information we could share at this meeting or I can come back and do something in a little more detail. But basically it's not just inflation, it is medical inflation. And we're finding that in a workers' comp system it is also a utilization issue. And the simplest example I can give you is 10 years ago I did something to my ankle, and maybe I go to an emergency room and I get an x-ray for

\$70.00. Maybe now I go to the emergency room and they do an MRI for \$700.00. Simplistic example, but it is that type of utilization that is driving up costs.

Again, if any of this wets your appetite for more we can certainly do that. You just need to let us know.

Next slide – Indemnity Claim Costs – I took you through this a couple of slides ago. But I wanted to show you this one so you can go through and see the annual uptick with indemnity claim costs.

The last slide, number 27, again it's been upticking. But if you take a look at where you are with average indemnity claim costs here in West Virginia compared to your surrounding states, you are in a pretty good situation. One of the things that you can't do too much of is compare state-to-state because workers' comp systems vary dramatic state-by-state. They vary with respect to benefits that are apportioned for injured workers, what the states do with respect to fraud. There is a whole array of things that come into the picture.

Again, given time constraints that I was asked to keep here today, I'm sorry for the rush job. But I think that's what we wanted to do – give you kind of a quick taste and see if there are any questions or comments.

Chairman Dean: Any questions, Mr. Chambers?

Mr. Chambers: No. Thank you.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. White, do you have something to say?

Steve White (Affiliated Construction Trades Foundation): On page 25, the difference between Alabama and West Virginia with the other states. Just explain that a little bit more.

Mr. Kokulak: Alabama, I don't know.

Mr. White: Or Virginia, close to our border. . .that \$43,000.00 per claim. . .

Mr. Kokulak: I should know a little bit more about the Virginia situation. I don't at this point. I'll circulate something back to you and get you an explanation on that.

Chairman Dean: Very good. Thank you.

4. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon. Mr. Kokulak is a hard act to follow and I'm afraid my charts and graphs are not nearly as pretty as his. I wanted to give you an update on what's going on at the Office of Judges and talk briefly about the April statistics that you have before you and give you some time to discuss the questions that you have for me. I know you presented an e-mail earlier in the week or late last week with some issues. I thought we could take some time to discuss the type of information that you're looking to receive from me.

First of all, we have a couple of administrative issues that I wanted to bring to your attention because they could impact the findings in this report. We have had a number of resignations, retirements. Over the last couple of months, probably starting in January, we had a retirement and a resignation. And this month I actually had another retirement announced, as well as an impending retirement that is coming up later this summer. There has been a massive influx of retirements in our office. It is definitely going to impact our bottom line. Since we spoke last month we have in fact started the paperwork for hiring an Administrative Law Judge II position. That has not been formally approved by the Governor's Office or the Secretary's Office, although it has been approved by Commissioner Cline. So we're still in the approval process of getting that done. It hasn't been posted yet. It should be forthcoming fairly soon. Right now it's kind of hard to gauge where we are going to be in the future. As you can see from this report we have about 3,500 protests pending as of the end of April. I don't think we will need to replace all of those judges at this time. I think we need to try to work it out to the best of our ability. At this point in time we are going to have to look into hiring at

least one judge for the time being, maybe another one later in the year. That impacts our bottom line.

As for the month of April – these are April statistics – this meeting [Industrial Council] is early in June so we have not had time to finalize our May statistics. I will note that just from what I've heard, on a preliminary basis, we had an uptick in the number of protests we've received by about 100 protests. That was somewhat of a dramatic increase in the number, so I'm anxious to see what May looks like once we get that finalized.

I wanted to point out to you – the report which is something that we looked at over the last few months with regard to final decision timeliness – I know the Council was concerned about how long it takes our office to get decisions out the door from the time the claim is submitted. If you look on page four, category F, you will see that we had 5.8% of our decisions were done in greater than 60 days. Again, I will point out that currently our Procedural Rule still says that we have 90 days under the law to get it out. Sixty days was our goal. I think we've met it consistently. I wanted to point out that we did a little bit of math on what does that actually come to with regard to the number of decisions that were beyond 60 days. It comes out to 15 decisions. It is a relatively low number in the grand scheme of things. And I'll have to say there are probably 15 extremely difficult decisions that were hard to make that took a little bit of time to get out the door. I know that has been a concern. And I think for the most part we've been fairly successful in reducing the number of time. I will point out too that with regard to the month of April, there were 13 judges deciding these cases. What we have essentially done is compress the number of judges and also compress the time. In light of all of that, I really think that we have done a successful job in getting these out relatively quickly.

I'll take any questions that you may have about the report. Other than that, I would like to hear more information about the type of information you want to see from the Office of Judges on a going forward basis.

Mr. Chambers: Just to clarify that 15, that's 15 in the month of April?

Judge Roush: Yes.

Chairman Dean: Do you have any questions, Mr. Dissen?

Mr. Dissen: I think your graphs are fine.

Judge Roush: Thank you. They're not mine, but I'll pass that along. I am sure the person that is doing these will be glad to hear that.

Chairman Dean: Mr. Hartsog, any questions?

Mr. Hartsog: No I don't, Mr. Chairman. I would like to ask that they give Judge Roush a little bit more time next time to speak a little bit about the type of cases that. . . especially if there's any kind of commonality or thread or issue that is recurring. . . I would appreciate it.

Chairman Dean: Mr. Marshall, do you have any questions on the report?

Mr. Marshall: No, Mr. Chairman.

Judge Roush: I will say that I met with the judges this morning and talked to them a little bit about your e-mail of last week and the types of information that you want to see. As we speak, and as I was sitting here today, the e-mails were rolling in talking to me about the trends that they are seeing. And they are more than happy to report back. So, hopefully, next month I can give you a more comprehensive report of. . . kind of the nuts and bolts of what's going on, on the appeals side of the Office of Judges.

Chairman Dean: Thank you, Judge. Steve White, do you have a question?

Steve White (ACT Foundation): I just wondered if you could respond briefly to the attorney's [Sue Howard] remarks about the stays? What else would you do and your perspective?

Judge Roush: Sure. As I was listening to her I did have a few thoughts come to mind. First, this stay provision, as Mary Jane [Pickens] pointed out, is relatively new to our industry. I mean it's been around a little while. Judge Leach, when he was there, was able to put forth a process in the rules for the stay provision. I will say that it is rarely utilized. I think during the entire three years I've been there we may have seen two, maybe three stays come before our office. So it is a rare occurrence. And I do think it is something that is utilized more at the Board of Review than our office, probably because that's a natural evolution of where it should go. I mean when something is concluded at our office you really don't think of asking us for a stay of our own decision, although the law does permit it. I'm not certain the reason why the parties do not utilize our office, but they rarely do. Again, we've seen maybe three. And, of course, I can't speak for the Board of Review. I did look up their Procedural

Rule. It is found in 102CSR1, if anybody is interested. We do have a process although it's rarely utilized.

Mr. White: Are you tracking what happens to the cases after they go out your door?

Judge Roush: Yes we do. We communicate frequently with the Board of Review. They give us reports of their reversals or remands, their affirmations, as does the Supreme Court. So we do follow our cases from the time they leave our door all the way up. We've never really done a comprehensive study of our reversal rate on up the chain. But, yes, we do take note of it all. We do study it. We do try to learn lessons from what goes on beyond our doors.

Alan Drescher (Administrative Law Judge): We don't track the states.

Judge Roush: No, we don't track the states. Thank you.

5. Summary of the May 3-4, 2011, Workers' Compensation Educational Conference

Mary Jane Pickens (General Counsel, OIC): I asked for this to be placed on the agenda, mostly because it was a big deal for us to do and we are pleased with how it turned out. Everybody has a book from the conference. And Mr. Dissen was there for at least part of Wednesday. It was a day and a half event, May 3 and 4. This is the second annual, and we had a pretty good turnout. We probably had a couple hundred people attend, and we had people there from states outside of West Virginia. We had people from Alabama, Texas, Florida, Tennessee and Georgia. So we were really pleased. It does appear to be something that adjustors want to attend and lawyers obviously. We made sure you could get continuing education for the attorneys, insurance producers, rehab professionals and nurses. We had medical people there – some nurses were there, and at least one doctor, an orthopedic surgeon from Morgantown who attended Dr. Walker's talk on carpal tunnel, which was interesting. I'm not a medical person, but I did attend that because of the recent *Davies* decision, just to learn as much as I could about the medical. And there was an interesting dialogue between Dr. Walker and the attendee from Morgantown. I thought it was well attended. We were pleased with the evaluations overall. And I did want to point out – because it has been a topic of discussion – this is sort of like Dennis and the NCCI meeting. This meeting is a good opportunity to hear what we are hoping is interesting to people, both

educational and interesting. And we would encourage everybody to attend next year if you have time.

We did have a presentation from our Fraud Unit, and from Andrew Pauley who is the Attorney Supervisor over the Legal Section on Regulatory Enforcement and Civil Investigations. He talked about the Insurance Commissioner's statutory authority in that realm. I felt that was a very thorough review of the Insurance Commissioner's authority to do the various regulatory things she does. That is in here. Everybody has a book and you can go home and just flip through it and maybe give you a sense of what we talked about. We try to change it up every year to keep it interesting. And certainly if you all have any ideas on what you think might be of interest to put on the agenda for next year, we would like to find out about it. We start planning in September for the following year, and that will be here before we know it. I just wanted to mention it. We are pleased with how it went and I wanted to talk about this.

Mr. Dissen: Mr. Chairman, if I just comment. Really it was my first one that I attended. In the past I have put on HR type seminars. This was very well done. The workbook is very good, and the Commissioner should be applauded for the efforts. No one is going to take this and read it at night. I think it is a good reference source. You guys did a great job.

Ms. Pickens: Thank you. I appreciate that.

Mr. Dissen: And the interesting thing was that at the table where I was seated there must have been seven or eight people there. They were all from the border states. Most of them were in the transportation type industry.

Ms. Pickens: Thank you very much.

Chairman Dean: Any comments from anybody else from the Council? Very good. Thank you.

6. General Public Comments

Chairman Dean: Does anybody from the general public have a comment or anything they would like to bring up today? Seeing none we'll move on.

7. Old Business

Chairman Dean: We'll move onto old business.

Ms. Pickens: Everyone can remind me if I'm overlooking anything. One of the things that we were talking about at the last meeting – and I wanted to come back with and it should be in your packet – is some complaint data. I wanted to share this with you and point out a couple of things. On the first page is Carrier Complaints. I asked Consumer Services to separate out the complaints against carriers lodged by insureds, and by employers. Obviously if you're a self-insured employer you are not going to have complaints against you about rating and cancellations and non-renewals and all that. We pulled that out, but I still think it is relevant because if you just look at a big number of carrier complaints and don't understand that that includes insureds as well as claimants, then obviously it's going to be a bigger number if you compared it to the self-insured employer.

The other thing that I wanted to point out about this is that all this means is that someone lodged a complaint. It doesn't mean that it was a good complaint or a bad complaint or it had merit or it didn't. We have a system I'm sure very similar to many other states in that it is all reported up to the NAIC – all the complaint data on all lines of insurance. Right now that system doesn't track a confirmed complaint or a complaint that has been determined to have some merit to it. So these are just sheer numbers, and they're a value really only for big picture types of analysis. I asked Scott Nuckles to be here as well. He is at the end of the table. He is an attorney that has been in our Legal Division for. . .

Scott Nuckles (Associate Counsel, OIC): Seven or eight months.

Ms. Pickens: And Scott meets every Monday morning with Kathy Beck who is our Director of Consumer Services. And every single complaint relating to workers' compensation is reviewed by Kathy Beck, her staff, and Scott. We don't involve Legal on the initial review with any other kind of complaint. We do have a very thorough review of these complaints. Most of these complaints, and Scott can speak from experience, that have to do with claim handling, claimant complaints, are very often because the claimant doesn't like the answer. They don't like the result.

I wanted to take a couple of minutes to talk again about the complaint process as it relates to workers' compensation because we handle those differently in the realm of workers' comp than we do in auto or homeowners because of the nature of the line of

insurance itself – how those claims are adjusted and what the Legislature has done – is different.

I think everybody understands by now that we don't have jurisdiction here in our Consumer Services Division to resolve the underlying dispute. The fact that somebody got a denial and they disagreed about that, we can't handle that here because the Office of Judges is where that protest goes. Jurisdictionally that's what they do and we don't. It is obvious you couldn't have two competing systems doing the same thing.

If we were to schedule a hearing for a consumer on a consumer complaint, it would be on the issue of whether the denial – not whether the denial was right or wrong necessarily – but whether the adjustor violated an unfair claim settlement practice provision of our Unfair Trade Practices Act. Even though I think that is a distinct legal issue, they're clearly related. If you think it through, if we were to have such a hearing, and if a hearing examiner sitting on behalf of the Offices of the Insurance Commissioner were to say, for example, a real broad category as an Unfair Claims Settlement Practice violation would be failure to pay benefits when liability is reasonably clear. That is sort of a "catch all" kind of a thing. Say for example that the hearing examiner were to determine that the company, the carrier, self-insured employer did violate that based on the evidence that is submitted in that proceeding, which is pretty informal; simultaneously [meanwhile] at the Office of Judges the underlying dispute is being litigated – a timeframe order is entered, the parties will gather medical evidence, they will submit it – and it could be totally different evidence. It could be evidence generated in support or in opposition to the protest. At some point down the road the Office of Judges could affirm that denial. And it could be based upon evidence that, had the adjustor had it at the time they made the decision, they might have ruled differently. So you can see where that would be confusing and disruptive, and in our opinion serve no useful purpose. Conversely, the Insurance Commissioner could determine that based on whatever the adjustor had at the time they made that decision they didn't violate the UTPA, but the decision could nonetheless be reversed perhaps down the road at the Office of Judges. Because of the nature of workers' comp and the fact that the Legislature and the Industrial Council's rulemaking sets forth very quick time standards, it is totally different from adjusting an auto claim where none of that exists out there in the law. What we do in the context of a complaint filed in an auto or homeowner's claim is just different.

Commissioner Cline: And just to build on that. If you look, the Legislature recognized that when you're dealing with an individual that needs access to care. . . a delay in getting that person taken care of is considerably more adverse than the frustration of not getting your car repaired in a more timely basis. Because of that they

look to create a more expedited process in the handling of these claims, which is why Judge Roush's office exists and why Scott [Nuckles] will encourage the claimant to go there. But having said that you do other things. . .

Scott Nuckles: We get quite a few complaints where a claimant simply disagrees with the claim decision. It's a fact based issue. Of course, that's what the Office of Judges is for, and we direct them there. There are also a lot of claims that we're able to resolve fairly easily by simply contacting the carrier. These people, like the rest of us, they make mistakes. And if you point the mistake out to them, we find that they correct it. They take whatever action is necessary to comply. So we get quite a few claims resolved fairly simply just by contacting the carrier and working with them. Our Consumer Services' folks handle most of that. Sometimes it is as simple as a phone call. Other times it's more formal. We have written complaints and written responses.

Commissioner Cline: When the complete complaint is filed downstairs in Consumer Services they send that information to the company. The company has 15 days to respond. There is a back and forth process, and it is ultimately a 60-day process where you've got the expedited review before Judge Roush that gets that claimant an answer quicker and more timely than going through the regular complaints process, in addition to the fact that the law specifies a different complaint.

Ms. Pickens: Exactly. That's what I was going to mention as a final point. Lawyers laugh about legislative intent, but they clearly had intent and I think they got it right here. I think recognizing the way these things happen between what we do and what the Office of Judges does, they have said very specifically that the Office of Judges has jurisdiction over the complaints alleging failure to timely act. And the Office of Judges has jurisdiction over complaints alleging an unreasonable denial of medical treatment, compensability, and temporary total disability, and the ability to hold expedited hearings on those matters. If you look at the whole body of it. . . I think they have the jurisdiction, and they can consistently handle all of those things with the least amount of disruption and confusion. . .

Commissioner Cline: . . .for the claimant. And that's not to say that Consumer does not provide guidance on how to file that protest, and Scott working with Kathy's staff – work with them to do that, and it is not uncommon. We're just a little different here in that the adjudication of the claims is housed with our office because in other jurisdictions you still have a workers' compensation division or a department of labor that is working to handle that. I know Judge Roush could speak to that because she attends meetings with her fellow administrative law judges. We try to be very careful in our work and support of their offices, but also being at arms length in the decision

making process so that you are making sure that there is not undue influence being put forward from the regulatory body versus the judicial portion of this. We are a bit different than every other state but Texas.

Ms. Pickens: Even though we don't hold consumer hearings when we get a written complaint form a workers' comp claimant, that doesn't mean that we don't do anything. We actually spend quite a bit of time with the complaints. At least there is a place where someone can call and they can find out what their rights are, and what are the timeframes, and what do I need to do next. We spend a lot of time helping people go through that process. So I just wanted to mention all of that since we were following up with the complaint data. We had to figure this out too in the beginning of 2006. And it seems like thinking back I remember some instances, before we had the procedures down very clearly, that there was a little overlap. And I remember Ann Rodak, from the Offices of Judges, was involved in some issues where we were proceeding on a consumer complaint and that exact thing happened. We had information that the Office of Judges didn't have. The Office of Judges had information we didn't have, and it was very convoluted. We finally decided that this was really of no great value. When the Office of Judges has jurisdiction they really ought to handle it.

Commissioner Cline: When you're making a ruling you have to rely upon the information that has been put forward.

Ms. Pickens: With all of that, does anybody have any questions or follow-up?

Chairman Dean: Mr. Chambers, do you have a question?

Mr. Chambers: Yes, I do have a couple. I understand that, with the exception of fact based things that need to go in the direction that they go, you do spend time – you and Kathy and the staff analyzing. . .they are reviewing these complaints. And then where it is appropriate you go to a carrier and say, "hey. . ." In that regard, do you have any sense that certain carriers keep making the same mistakes over again?

Mr. Nuckles: In the time that I've been here, which is seven or eight months, I haven't seen any disturbing trends; that is the same issue repeated by a carrier. Now we see some of the same mistakes made by different carriers. Of course a lot of times those are things that can be resolved through litigation. Sometimes they can't, and that's when we have to go to the carrier and try and work it out in that manner. But we do keep an eye out for trends – for macro issues, for systemic issues. If we ever see that developing we'll send it to our Market Conduct folks, which I think then our Regulatory Rule kicks in.

Mr. Chambers: In what way do you do that? Is there some systematic way you determine that there are trends? Or is it just your own anecdotal. . .?

Commissioner Cline: Our Director of Consumer Services has been at this for a very long time. In other lines of insurance, as well as this, if she sees things, she will work to report it. And also through the market conduct methodology there are periodic meetings with all the various divisions sitting down with the market conduct folks, and they share information back and forth because you might see something. . .because denial of claims may indicate a more systemic risk problem relating to the solvency of a company. There are all different ways that the various regulatory pieces and functions we have interplay and work together. So there are regular meetings with the various divisions sitting down and identifying what they're seeing in trends and analysis. And before Scott [Nuckles] joined us we did have another attorney that he replaced that was doing the same thing with Kathy. But to that point, when Judge Roush went to the Office of Judges she also worked in this same area where Scott is and very quickly identified that there were apparent. . .generally adjustor issues. Because of the uniqueness in West Virginia law, which is what prompted the Webinars and all the outreach to the companies to work on the adjustor issues, and I think she saw a trend down on those kinds of things. So she also identifies issues that may be more systemic and need to be addressed.

Judge Roush: We regularly get complaints that sometimes don't fit into the protest or the appeal process. Either they don't meet the jurisdictional requirements, such as some sort of issue that precludes us from taking a protest on. We will actually refer that down to the Consumer Services Division so the claimant really is not neglected. All the pieces really do work together. So we also refer it to Consumer Services regularly.

Mr. Chambers: So, you do reviews. You make some determination other than for those that opt to be passed on to the Office of Judges, which I think we all understand. And you make some determination of the merit of the complaint, and then you take action based on that. So, isn't it possible to keep some statistics on what those conclusions are? And what those actions are? And whether or not there is repeat improper conduct on behalf of certain carriers?

Mr. Nuckles: I guess it would be. I believe there is a complaint index for each carrier, and I believe it is tracked to some extent.

Ms. Pickens: I can talk to Kathy Beck some more. I think we answered our own question. This list that I gave you doesn't have anything about the merit of the complaint.

Mr. Chambers: Right.

Ms. Pickens: It is just a complaint.

Mr. Chambers: So it's not the list we need.

Ms. Pickens: And I think what Scott does, and what Dan Murdock did before Scott, is somewhat of a more informal nature in terms of follow-up with the carrier. It is done on a complaint-by-complaint basis. I don't know that there is any database that records the outcome. I don't know that. I suspect there is not. And, again, this is a complaint database that we have through NAIC that every state has, so it is what it is.

Mr. Chambers: It's my impression there is not a database to the outcome. And I'm saying it seems to me that it is possible that there could be one and that that would go toward what we don't know as we discussed in last month's meeting.

Ms. Pickens: That's an IT. . .I don't know that we can change this. . .

Commissioner Cline: This is something again. . .we have to sit down with the IT staff and see. . .

Mr. Chambers: If your IT people can't do it, I could find you some that can.

Commissioner Cline: I mean it's not. . .

Ms. Pickens: That's not the point.

Mr. Chambers: Pardon me if I misunderstood.

Commissioner Cline: What I was getting ready to build upon – there are enhancements that have been going on at NAIC, and we have joined onto those enhancements through improvements to the state based system, SBS. And we are in the process of transitioning into that. So that's what I would need to get with. We need to have that discussion with John as to what all the modifications are because I know there are modifications going on in Agent Licensing and. . .

Ms. Pickens: It is my understanding from Kathy Beck is that she thinks that some tracking of the outcome of the complaint or the merit of the complaint is in the future, maybe a year into the future, but it's not right now.

Commissioner Cline: It's a building upon the systems, and I'm not trying to make excuses here, it's just that part of our database. . .many of our databases tie into the National Association so those enhancements go on. We were not as quick on the SBS. I mean we are the 18th or 19th state. But be mindful that in 2005 our whole world changed. Our IT focus had to be working with BrickStreet for the splitting of the employees, the assets, and all of that; and the transition and the development of the three TPA's. So our IT staff has been inundated over time, and then just trying to keep up with all the other database requirements. Kathy and I. . .we've had these conversations in the past that having a better understanding of what the ultimate resolution of claims would be could benefit us from a regulatory perspective. But, again, they are experienced in looking at trends and bringing that to our attention. They could sort by carrier. I'm going to use auto because it's a littler easier. But I can't just look at five complaints on State Farm in auto and compare that to five complaints on Horace Mann. State Farm has 30% of the market share. Horace Mann doesn't even have a percent. And through the NAIC, when you're looking at market conduct, we have all these different ratios and developments taking into account all those different considerations as to try to determine what the real nature of the issue is.

Chairman Dean: Any other questions, Mr. Chambers?

Mr. Chambers: That's all I have.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Commissioner Cline: If I could mention one more thing because I did double check. It appears that the Board of Review's monthly report is going to the members of

the Industrial Council. So if you're not receiving it, all with the exception of Mr. Chambers, and they don't have him on the list. We will get that modified.

Mr. Chambers: Thank you.

Mr. Hartsog: I'm not getting it.

Mr. Marshall: I don't believe I am either.

Commissioner Cline: If you could check your e-mail address. The sender would be Barbara Ong. But I have verified that Mr. Chambers was not on that distribution list, and I apologize for that, but we will get that corrected. [Commissioner Cline passed out the mailing list to each Council member for verification of their e-mail address.]

Chairman Dean: It is right. We're not checking our e-mail very good.

Ms. Pickens: Another issue that came up. . . I think the minutes reflected I was to report back on. There was some talk at the last meeting about how to gather data. I think Mr. Chambers questioned whether surveys were an option. And I haven't gotten super far with that, but I did talk to the State of Montana. I spoke with a Researcher in the Department of Labor in the State of Montana. They have used surveys in the past to find out from the stakeholders in their workers' comp system how they think things are going and to gather data. I started thinking about it and I talked to Dr. Becker a little about it. Our thinking was actually echoed by the fellow from Montana, which was be very cautious; be very deliberate and thoughtful when you go down this road; make sure that you use the right people who know how to do surveys to get helpful information; to get information as objective as possible because there is always going to be a certain bias in there; but to get information that's helpful, objective and actually useful. Think really hard about what you want to get out of it, and then how you put the process together to achieve that result. There are probably some other states and I'm happy to keep looking into that. I think it can be done, but I think it's a pretty thoughtful and deliberative process. We do have a researcher, Aaron Baughman, who was here to talk about statistics that he had at the last meeting. I think Aaron would be a good person to start thinking about it. I don't know if we would even need some expertise beyond that. I guess the point I wanted to make is that it really is an important task in that you would not want to gather information that was not only not helpful but perhaps harmful to all of the work that's been done for the last six years. That would be our word of caution. If the Council would like for me to continue to see what I can find from other states and start gathering information about ideas, if you will, we're happy to do that.

Chairman Dean: If you would please.

Ms. Pickens: Okay.

Chairman Dean: Any questions for Mary Jane on that?

Mr. Chambers: Do you have any thoughts about ways other than surveys that we could address our "lack of information" that was pretty well documented in last month's minutes?

Ms. Pickens: Not today, but we'll certainly keep thinking about that. You know our Legislature just chose to go in a different direction. As the Commissioner mentioned earlier, most states still have a Department of Labor or a Workers' Compensation Commission. That's all it does is deal with the workers' comp system. Our Legislature terminated, abolished that agency and said that we were going to move all of this risk over to private insurance companies for the most part, and they would be regulated by the Insurance Commissioner. So, there's not a central state agency that just gathers a lot of data about claims. Now NCCI. . .and that's why I was anxious for Dennis to come talk to you all. I hope it was helpful because they really have a lot of information. As far as claims information, NCCI really is a good place to look to for information. If you all want to drill down on any of those topics we can have him come back. But my point was the Legislature just didn't set up our system to be like it is still in a lot of other states. I don't know. We would have to think about other ways to gather data other than surveys, and I don't have anything today.

Chairman Dean: Do you have a recommendation, Mr. Chambers?

Mr. Chambers: I don't. But I believe we need to address it immediately. And I would site the legislation that says, "The Industrial Council 'shall' among other things establish and monitor performance standards and measurements to ensure timeliness and accuracy of activities performed [under Chapter 23 of the Code] and applicable rules. And it shall perform all record and information gathering functions necessary to carry out its duties under the Code." I don't believe we're doing that, and I believe we need to address it.

Ms. Pickens: When you talk about the information gathering authority to carry out its duties under the Code, I think you get back to the issue, "What are the duties under the Code?" Our feeling with the "information gathering" aspect is really related to the safety study and some of the others – the claims index and some other specific statutory duties that have been assigned to the Industrial Council.

Mr. Chambers: I understand. I just don't think that goes far enough in my opinion.

Mr. Hartsog: And I share that opinion. I think our view is that we want to and feel compelled to get into what's working and what's not working and that you can't address every slice of every problem. But if there are trends or increases in certain areas with regard to carriers or claimants or whomever that we can help flush out, address what the issue is and bring it forward and modify, change, adopt, or rule change or something that helps make the system work better. I think that that is one of our mandated objectives within the workers' comp system. And that's one reason I think a lot of the struggles with the rule change that was proposed about 15 months ago, or something like that, was that. . .okay, we're going to make a change in the system. How do we know? How can we get the sense that what is the real problem and what are we addressing? And I think it was "fix anything" rather than just trying to change something to see what happens. And that's the direction I would like to see us. . .get more substantive information on where the issues are and how we can resolve them. And we can't really do that, especially when you're probably looking at a couple of accountants and lawyers over here, as to something we could get our arms around and look at it and say, "Okay, here's what the problem is and here's how we can go about addressing it."

Commissioner Cline: I would just caution that we have to be careful in the balance of the responsibilities we have in regulating the insurance industry under Chapter 33 versus the responsibilities in Chapter 23. And we struggle with that too. But clearly the insurance industry cannot have two regulators. That causes them undue stress and risk when they look at the market they're going to play in. And that was clearly one of their concerns as we were working with them to open up the market is the balance between the regulator versus the other aspects of our system. Again, we're a little different where you had more clearly delineated the Workers' Compensation Commission role versus the insurance regulator's role in other areas. That is something that has to be balanced as well when you're looking at this. And we have very broad authority in looking at whatever we want to on an insurance carrier, and actions as appropriate. But it's consistency in regulation that also provides for the healthy market place. And that's the one thing I think that everybody has to agree. We have 220 carriers here. . . Rates are down 43%, and that is with some benefit uptick in 2008 that the Legislature enacted. Of those you have 180 that actually have bound coverage here, which is indicative of good competitiveness because I don't have that many carriers in the commercial auto market.

Chairman Dean: Mr. Dissen, do you have a comment?

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Mr. Dissen: I do not, sir.

Chairman Dean: Mr. Marshall, do you have a comment?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Very good. Mary Jane, do you have anything else you want to discuss.

Ms. Pickens: I think that's it.

Chairman Dean: We're still under old business. Anybody from the Industrial Council have anything else they would like to bring up under old business? Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: The only thing I have is that after the last meeting I did write a letter to the West Virginia Ethics Commission requesting an advisory opinion on the Open Meetings. Well they happened to be meeting also today, so by the next meeting I'll give you their. . .

Ms. Pickens: I heard they were meeting today.

Chairman Dean: Mr. Hartsog, do you have anything under old business?

Mr. Hartsog: I think either at the last meeting or the meeting before, Mary Jane spoke about a recent Supreme Court decision, and you all were looking at. . .related to comp. . .that you may or may not. . .to be a provision to a rule that we had. . .

Ms. Pickens: The only one I'm thinking is carpal tunnel.

Mr. Hartsog: Have you looked at that? Is there anything that you see forthcoming that we need to look at or know about?

Ms. Pickens: Not immediately in terms of rules. This is Rule 20. And honestly before we would ask that Rule 20 be opened. . .I mean this is not the only issue in Rule 20 you would address if you're going to do this. I would see changes to Rule 20 to only

occur after considerable – and by considerable – I mean perhaps several months' worth of work with stakeholders and providers and that type of thing leading up to something that we would bring to the Industrial Council. Dr. Becker and I have talked about it quite a bit. On *Davies* though recently, within the last week or two, we did talk to Dennis Kokulak from NCCI and some other folks from NCCI to make sure they understood the impact of the decision and any effect on loss costs and that kind of thing trending forward, and they do. They totally understand it.

Chairman Dean: Mr. Marshall, do you have anything you would like to bring up?

Mr. Marshall: No

8. New Business

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: I would like to "thank" Commissioner Cline for all her years of service to the State of West Virginia, and to wish her all the happiness in her retirement.

Commissioner Cline: Thank you.

Chairman Dean: Mr. Hartsog, do you have anything?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Very good.

9. Next Meeting

Chairman Dean: The next meeting is scheduled for July 14. We have some conflicts here, and we would like to move it to July 20. I think the conference room is open that day. The next meeting will be Wednesday, July 20 at 1:00 p.m.

10. Executive Session

Chairman Dean: The next order of business is Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall: So made, Mr. Chairman.

Chairman Dean: There is a motion. Is there a second?

Mr. Hartsog: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any questions on the motion? All in favor signify by saying "aye." Opposed, "nay." The aye's have it. We will now go into Executive Session.

[The Executive Session began at 2:42 p.m. and ended at 3:07 p.m.]

Chairman Dean: We have a Resolution before the Industrial Council to approve the renewal of self-insured status for the nine employers on Exhibit A:

Alliant Techsystems, Inc.
CBOCS, Inc.
City of Charleston
City of Fairmont
City of Parkersburg
City of Wheeling
Family Dollar Stores of West Virginia, Inc.
Kingsford Manufacturing Company
Royal Vendors, Inc.

Chairman Dean: Is there a motion to approve the renewal of these nine companies.

Mr. Dissen: So moved.

Mr. Chambers: Second.

Chairman Dean: A motion has been made and seconded to approve the renewal. Any questions on the motion? All in favor please signify by saying "aye." All opposed, "nay." The aye's have it. [Motion passed.]

Mr. Marshall: I would like the record to note, if you would. Because of a material business relationship that I have with Family Dollar Stores of West Virginia, Inc., I abstained from voting on this motion.

Ms. Pickens: Can I do one thing? Obviously we invited NCCI to be here because they just have a lot of information, and they're a really good resource, and I thought it would be interesting – hopefully helpful – to hear a little bit more about what their role really is. We are happy to continue to do that kind of thing if it's of interest to the Industrial Council. I guess I just wanted to gauge the level of interest. We don't need to keep you here forever and ever every time. But we're happy to do 30 minutes from each division just to talk generally about what we do, and how it all relates together, that kind of thing – if that's of interest. Because I've already contacted the various division directors to get a sense from them about whom they would want to present and what they want to talk about. My next step is to put together [internally] a proposed agenda

over the next six months and see if folks want to show up and talk about who we are and what we do. If that is okay with you, we'd love to do that.

Chairman Dean: That's fine.

Mr. Dissen: The only comment I have is on the next meeting date, I'll be coming back from Europe on the 19th. I should be here, but if for some reason I'm not. . .

11. ADJOURN

Chairman Dean: If there is no other business today, is there a motion to adjourn?

Mr. Dissen made the motion to adjourn. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 3:15 p.m.